

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUPERT J. ORTEGA,

Plaintiff,

v.

No. CV 20-1245 CG

KILOLO KIJAKAZI,¹
Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION TO AWARD ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on the Plaintiff Rupert J. Ortega's *Opposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support* (the "Motion"), (Doc. 37), filed March 3, 2022; and the Commissioner's *Response to Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act* (the "Response"), (Doc. 38), filed March 14, 2022. The Motion states "[t]he Commissioner opposes the [M]otion." (Doc. 37 at 2). However, the Commissioner's Response indicates that "the parties, through their respective counsels, have [since] agreed to a compromise settlement of Plaintiff's request for [Equal Access to Justice Act ("EAJA")] fees." (Doc. 38 at 1).

The parties agree that Mr. Ortega, by his attorney Laura J. Johnson, Esq., should be awarded \$7,500.00 in attorney fees. *Id.* Further, the parties agree that "[p]ayment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action[.]" and that "the

¹ Kilolo Kijakazi was appointed Acting Commissioner of the Social Security Administration on July 9, 2021.

EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406, subject to the offset provisions of the EAJA." *Id.* The Court, having reviewed the Motion under EAJA, 28 U.S.C. § 2412, and noting that the Motion is unopposed, finds the Motion is well-taken and shall be granted.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$7,500.00 in attorney fees pursuant to EAJA, 28 U.S.C. § 2412, made payable to Plaintiff but mailed to Plaintiff's attorney. *See Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED that if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE